IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 1ST NOVEMBER 2006 / 10TH KARTHIKA 1928

WP(C).No. 11212 of 2004(I)

PETITIONER:

JOHN KOSHY,
EDAVANA VEEDU, S.R.P. MARKET P.O., KARUNAGAPPALLY.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

RESPONDENTS:

---

1. THE TAHSILDAR, KARUNAGAPPALLY.

2. THE DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. S. DILEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF JUDGMENT IN OS NO. 17/03 DATED 28.8.2003 OF SUB COURT, ERNAKULAM.

EXT.P2 TRUE COPY OF NOTICES UNDER SECTIONS 7 AND 34 OF THE RR ACT DATED 20.1.2004 ISSUED BY R1

EXT.P3 TRUE COPY OF OBJECTIONS DATED 2.2.2004 SUBMITTED BY PETITIONER TO P2 NOTICES.

EXT.P4 TRUE COPY OF NOTICE UNDER SECTION 36 OF THE RR ACT ISSUED BY R1 TO PETITIONER.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 11212 OF 2004

Dated this the 1st day of November, 2006

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of court fee of Rs. 11,763/- . The judgment produced in court show that the petitioner filed a suit as an indigent person and even the suit is decreed with costs, which obviously includes court fee. The court has held that court fee is to be paid by the plaintiff, that is the petitioner. In the circumstances, recovery proceedings initiated against the petitioner in terms of the decree is perfectly in order. However, since petitioner submitted that decree is not executed and in the course of execution of decree, petitioner will pay court fee, there will be direction to respondents to defer recovery proceedings for six months from now to enable the petitioner to apply for execution of decree. Respondents can make a claim before the executing court and executing court will appropriate the amount deposited in execution proceedings first towards court fee and the balance will be released to the petitioner. If the petitioner does not get the decree executed in six months, then

respondents are free to proceed for recovery of court fee from the petitioner after six months because by settlement between the petitioner and the judgment debtor, the claim of the Govt. for court fee cannot be defeated.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge